

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE KOELTL

'08 CIV 56727

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JOHN WILEY & SONS, INC., :

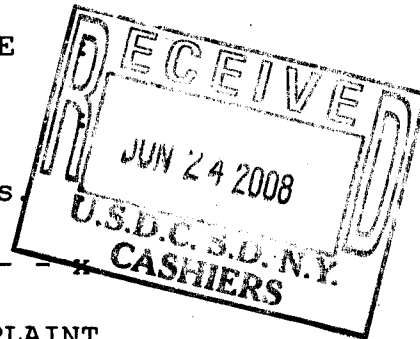
Plaintiff, :

- against -

: 08 Civ.

STEVEN SWANCOAT D/B/A GANNSCIENCE
D/B/A GANNSCIENCE.COM, JOHN DOE
NOS. 1-5 AND JANE DOE NOS. 1-5,

Defendants.
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COMPLAINT

Plaintiff John Wiley & Sons, Inc. ("Wiley"), by its undersigned attorneys, for its complaint against defendants Steven Swancoat d/b/a Gannscience d/b/a Gannscience.com, John Doe Nos. 1-5 and Jane Doe Nos. 1-5 avers:

Nature of the Action

1. Wiley is bringing this action to obtain legal and equitable relief to remedy defendants' infringement of Wiley's copyrights and trademarks through their sales of counterfeit and pirated copies of Wiley's well-known works.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over the first three claims for relief in this action pursuant to 28 U.S.C. §§ 1331 and 1338 because they arise under the Copyright Act, 17 U.S.C. § 101 et seq. or the Lanham Act, 15 U.S.C. § 1051

et seq. The Court has subject matter jurisdiction over the fourth claim for relief under 28 U.S.C. § 1367 because it is so related to the claims within the original jurisdiction of the Court that they form the same case or controversy under Article III of the United States Constitution.

3. Upon information and belief, venue is proper in this District pursuant to 28 U.S.C. § 1391.

Parties

4. Wiley is a corporation organized and existing under the laws of the State of New York with its principal place of business at 111 River Street, Hoboken, New Jersey 07030.

5. Upon information and belief, defendant Steven Swancoat d/b/a Gannscience d/b/a Gannscience.com ("Swancoat") is a natural person residing at 708 Lakepoint Street, Grosse Pointe Park, Michigan 48230.

6. Upon information and belief, defendants John Doe Nos. 1-5 and Jane Does Nos. 1-5 are associates of Swancoat whose identities are presently unknown to Wiley.

Background of this Action

7. Wiley is one of the world's largest publishers of books and journals. Each year, Wiley publishes thousands of scholarly books and hundreds of scholarly journals in fields including science, computers and medicine.

8. The works that Wiley publishes are written and edited by experts in their fields. As its standard practice, Wiley requires its authors to assign their copyright in a work to Wiley.

9. Wiley invests significant monies to publish its copyrighted works. Wiley, for example, incurs substantial costs in royalties, content creation, licensing, copyediting, proofreading, typesetting, layout, printing, binding, distribution, and promotion.

10. Wiley earns a substantial portion of its revenue from the publication of its copyrighted works and would suffer serious financial injury if its copyrights were not enforced. A substantial decline in its income could cause Wiley to cease publishing one or more deserving books or journals.

11. Wiley routinely registers its copyrights. Wiley has generally registered its copyrights, including those identified on Schedule A (the "Wiley Copyrights").

12. Wiley also owns numerous trademarks that it uses to differentiate its products from those of its competitors. Among Wiley's well-known trademarks are "John Wiley & Sons," "Wiley," and the "John Wiley Colophon" (the "Wiley Trademarks"). The United States Registrations for the Wiley Trademarks are identified on Schedule B.

Defendants' Actions

13. Defendants have, without Wiley's permission or consent, sold pirated and counterfeit CDs and downloadable e-books that infringe the Wiley Copyrights and Trademarks.

14. Defendants have sold these pirated and counterfeit CDs and e-books using Internet auction services, such as eBay and the website gannscience.com, and have delivered these CDs and e-books using the United States mail and other facilities of interstate commerce to purchasers residing in the United States and in this District.

15. Upon information and belief, defendants have sold these pirated and counterfeit CDs and e-books with the intent to trade off the goodwill Wiley has earned and to confuse the public into believing that the products defendants sell originate from Wiley.

FIRST CLAIM FOR RELIEF
(Trademark Infringement -- 15 U.S.C. § 1114(a))

16. Wiley repeats the allegations contained in Paragraphs 1 through 15 above as if set forth in full

17. Wiley owns the Wiley Trademarks, for which it has obtained United States Trademark Registrations. The Wiley Trademarks are valid and enforceable.

18. Defendants have infringed the Wiley Trademarks in violation of 15 U.S.C. § 1114(a) by using the Wiley Trademarks in their CDs and e-books without Wiley's consent.

19. Defendants' acts complained of herein have damaged and may continue to damage Wiley irreparably. The damage to Wiley includes harm to its goodwill and reputation in the marketplace for which money cannot compensate. Wiley has no adequate remedy at law for these wrongs and injuries. Wiley is, therefore, entitled to a preliminary and permanent injunction restraining and enjoining defendants and their agents, servants, employees, and attorneys and all persons acting in concert with them from using the Wiley Trademarks or any colorable imitation of them.

20. Because defendants have willfully infringed the Wiley Trademarks, Wiley is entitled to recover (1) defendants' profits from the infringing CDs and e-books, (2) Wiley's damages, (3) the costs of the suit, and (4) reasonable attorneys' fees.

SECOND CLAIM FOR RELIEF
(Trademark Counterfeiting - 15 U.S.C. § 1117)

21. Wiley repeats the averments in paragraphs 1 through 20 above as if set forth in full.

22. In connection with the sale of their pirated CDs and e-books, defendants have used counterfeits of the Wiley Trademarks.

23. Based upon defendants' use of counterfeits of the Wiley Trademarks in connection with their sales of pirated CDs and e-books, Wiley is entitled to recover treble damages, treble profits, and/or statutory damages, pursuant to 15 U.S.C. § 1117(b) and (c).

THIRD CLAIM FOR RELIEF
(Copyright Infringement - 17 U.S.C. § 501)

24. Wiley repeats the averments in paragraphs 1 through 23 as if set forth in full.

25. Wiley owns the Wiley Copyrights.

26. Wiley has registered and received United States Certificates of Copyright Registration for the Wiley Copyrights.

27. The Wiley Copyrights are valid and enforceable.

28. Defendants have infringed the Wiley Copyrights in violation of 17 U.S.C. § 501.

29. Defendants' acts have irreparably damaged and, unless enjoined, will continue to irreparably damage Wiley. Wiley has no adequate remedy at law for these wrongs and injuries. Wiley is, therefore, entitled to a preliminary and a permanent injunction restraining and enjoining defendants and their agents, servants, employees, and attorneys and all persons

acting in concert with them, from infringing the Wiley Copyrights.

30. Defendants have willfully infringed the Wiley Copyrights. Wiley is therefore entitled to recover (1) defendants' profits, or (2) Wiley's damages, or alternatively (3) statutory damages.

FOURTH CLAIM FOR RELIEF
(Common Law Unfair Competition)

31. Wiley repeats the averments in paragraphs 1 through 30 above as if set forth in full.

32. Defendants' acts complained of herein have damaged and may continue to damage Wiley irreparably. The damage to Wiley includes harm to its goodwill and reputation in the marketplace for which money cannot compensate. Wiley has no adequate remedy at law for these wrongs and injuries. Wiley is, therefore, entitled to a preliminary and a permanent injunction restraining and enjoining defendants, their agents, servants, employees, and attorneys and all persons acting in concert with them from using the Wiley Trademarks or any colorable imitation or variation of them, to restitution of defendants' ill-gotten gains, and to punitive damages.

WHEREFORE, Wiley demands judgment:

A. Preliminarily and permanently enjoining defendants, their agents, servants, employees, and attorneys and

all those acting in concert with them from infringing the Wiley Copyrights in violation of 17 U.S.C. § 501;

B. Awarding Wiley its damages or defendants' profits, or alternatively, at Wiley's election, statutory damages, as a result of defendants' infringement of the Wiley Copyrights;

C. Preliminarily and permanently enjoining defendants, their agents, servants, employees, and attorneys and all those acting in concert with them from infringing and counterfeiting the Wiley's trademarks in violation of 15 U.S.C. § 1114(a);

D. Awarding Wiley its damages and/or defendants' profits from their willful infringement and/or counterfeiting of Wiley's trademarks pursuant to 15 U.S.C. § 1117(a);

E. Awarding Wiley treble damages, treble profits and/or statutory damages pursuant to 15 U.S.C. § 1117(b) and (c);

F. Awarding Wiley its costs in this action, including its reasonable attorneys' fees pursuant 17 U.S.C. § 505 and 15 U.S.C. § 1117;

G. Awarding Wiley punitive damages in an amount to be determined by the trier of fact in this action; and

H. Granting such other and further relief as to this

Court seems just and proper.

Dated: New York, New York
June 24, 2008

DUNNEGAN LLC

By William Dunnegan
William Dunnegan (WD9316)
Megan L. Martin (MM4396)
Attorneys for Plaintiff
John Wiley & Sons, Inc.
350 Fifth Avenue
New York, New York 10118
(212) 332-8300

Schedule A
"Wiley Copyrights"

Title (Date of Registration) (Registration #)

1. Beyond Candlesticks (December 29, 1994) (TX-3-978-463)
2. Beyond Technical Analysis, Second Edition (July 5, 2001) (TX-5-425-003)
3. The Candlestick Course (July 14, 2003) (TX-5-771-146)
4. Come Into My Trading Room: A Complete Guide to Trading (June 27, 2002) (TX-5-562-353)
5. Dynamic Hedging: Managing Vanilla and Exotic Options (February 4, 1997) (TX-4-462-930)
6. Intermarket Technical Analysis (May 17, 1991) (TX-3-123-453)
7. Long-Term Secrets to Short-Term Trading (March 26, 1999) (TX-4-945-747)
8. Market Neutral Strategies (December 15, 2004) (TX-6-092-184)
9. Trading for a Living (July 13, 1993) (TX-3-604-813)
10. The Ultimate Trading Guide (September 13, 2000) (TX-5-276-334)
11. Trade Like Jesse Livermore (December 12, 2004) (TX-6-072-932)

Schedule B
"Wiley Trademarks"

<u>U.S. Trademark</u>	<u>Registration Number</u>	<u>Class</u>
1. "JW" Colophon	2168941	009, 042
2. "Wiley"	1003988	009, 016, 036, 038
3. "Wiley"	2159987	009, 042